Kuhlman, Incorporated *and* Willie F. McClearen, Jr. Case 26–CA–13996

October 17, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 16, 1991, Administrative Law Judge Bernard Ries issued the attached decision. The Respondent filed exceptions and a supporting brief.[1] The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,[2] and conclusions and to adopt his recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Kuhlman, Incorporated, Jackson, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has requested that the record be reopened and that it be given the opportunity to present oral argument. The request to reopen the record is denied as the Respondent has failed to state a sufficient basis for granting such a request. The request for oral argument is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Grace Speer, Esq., for the General Counsel.
Albert H. Petajan, Esq. (Brigden & Petajan, S.C.), of Milwaukee, Wisconsin, for the Respondent.

DECISION

BERNARD RIES, Administrative Law Judge. This matter was heard on February 21, 1991, in Jackson, Tennessee. The case is based upon a charge filed on August 13, 1990, as amended on January 8, 1991, and a complaint issued on October 11, 1990, and amended on February 8, 1991.

The amended complaint alleges three matters of substance: that Respondent violated Section 8(a)(3) and (1) of the Act by, on ''July 6, 1990,''[1] discharging Willie F. McClearen Jr.; violated Section 8(a)(3) by refusing, ''since on or about July 6, 1990,'' to abide by an arbitration award in favor of McClearen; and violated Section 8(a)(1) on or about July 6 and 8 by telling McClearen that the Respondent did not want him to discuss grievances with the Union and that he was being discharged because he had filed a grievance with the Union.

Counsel for both active parties have filed briefs. I have reviewed the transcript of proceedings,[2] the exhibits, and the briefs, and I have considered my recollection of demeanor of the witnesses. Having done so, I reach the following

FINDINGS OF FACT

I. THE BASIC FACTS; FINDINGS AND CONCLUSIONS

A. *The Discharge of Willie F. McClearen Jr.*

Respondent is a national enterprise which, inter alia, contracts with the Quaker Oats Company in Jackson, Tennessee, to provide maintenance of its refrigeration equipment. At Jackson, Respondent recognizes Local 407, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO–CLC (Local 407), as the collective-bargaining representative of its employees. It appears that, on average, Respondent employs two regular employees at the Jackson Quaker Oats facility, and calls upon Local 407 to supply other welders and pipefitters as needed from time to time.

Tommy DeLoach has been the superintendent of Respondent's Jackson operation for a few years, and is also a longtime member of Local 407. Willie McClearen is a pipefitter who has been referred to jobs through Local 407 for many years, including work for Respondent.

On Tuesday, June 26, Superintendent DeLoach contacted Local 407 Business Manager J. T. Lewis and said he needed two employees on Monday, July 2, to install a water line, a job that would take about 4 days.[3] Another job (an ammonia line job) arose on June 27, and DeLoach himself called in one regular welder, Danny McPeake, to start *that* job on June 27 and also called Lewis again to have him tell one of the two men he was to send on July 2 to come in on June 28 to work with McPeake on the ammonia job. Lewis sent Willie McClearen on June 28, and McClearen worked on that day and on June 29.

On Sunday, July 1, McClearen called DeLoach to notify him that he would be unable to work on Monday because he was to be a funeral pallbearer, and that he would return on Tuesday. DeLoach said that would be ''fine.'' On Monday afternoon, however, DeLoach called McClearen at home and told him not come back to work on Tuesday, but rather to wait until Thursday.[4] McClearen accepted the change of instruction.

When he appeared on Thursday, McClearen was told by DeLoach that he had a different project for McClearen to work on with pipefitter Ray Eaves, cutting some holes in the Quaker Oats plant roof to run new pipe into the blast freezer. When he reached the roof, he saw McPeake working with David Overton, a pipefitter-plumber employee who had been hired on July 2, and who, McClearen was told, had been working with McPeake on the water line job on Monday and Tuesday. McClearen felt aggrieved by the fact that he had been told to stay home on Tuesday while Overton, a slightly more junior employee, had been allowed to work, and, dur-

[1] All dates hereafter refer to the year 1990.

[2] Certain errors in the transcript have been noted and corrected.

[3] Lewis testified but did not dispute this work estimate.

[4] Wednesday was July 4, a holiday.

ing morning breaktime, he approached Billy Tims, the appointed union steward on the job. They summoned DeLoach, who was in the vicinity, and McClearen claimed that DeLoach owed him a day's pay for Tuesday, with which DeLoach disagreed. Tims stated that he was unsure of what the contract provided in such cases, and said he would speak to business agent Lewis.

What happened after that insofar as McClearen's persistence in pursuing the matter is left somewhat uncertain in the record. On the whole record, I find the following approximation of the facts. McClearen conceded that as the employees were returning from lunch on Thursday, he asked Tims if he had spoken to Lewis yet, but Tims said he had received no new information from Lewis. Tims testified that McClearen stopped him again after the Thursday afternoon workbreak to discuss the matter, and Tims told McClearen that they should do their job and discuss the problem on their time off. Tims further testified that on the next morning, McClearen once again bothered him about his grievance; Tims told McClearen that they had better work, but that he would contact Lewis as soon as possible. Around that time, DeLoach approached and asked what was going on. Tims told him. Later in the day, about 2 p.m., when DeLoach came to see Tims again, the latter told him that McClearen ''keeps coming by harassing me.''

At some point, DeLoach went on the roof and confronted McClearen about bothering others. An argument ensued, complete with obscenity and profanity (my guess, based primarily on a comparison of the testimony of McClearen and DeLoach, is that McClearen was the more aggressive and confrontational).[5] McClearen conceded that, during the argument, DeLoach said, with reference to McClearen's asserted right to discuss his grievance with Tims, that he had talked to Tims ''all you're going to talk to him'' and ''[i]f you're going to talk to him, you talk to him at the union meeting'' (the weekly meeting was to be held that evening).

DeLoach disappeared, returned, and told McClearen to come downstairs, where, in the presence of Tims, he handed McClearen a termination notice. According to McClearen, whose testimony is doubtful, DeLoach attributed the discharge to McClearen's ''talking too damn much . . . around them Quaker Oats employees, they're non-union employees and I don't want you talking around them people no more.''[6]

There is general agreement that McClearen pleaded for his job, saying ''I don't want to get fired.'' DeLoach capitulated and took back the termination notice. While DeLoach testified that all he told McClearen was to ''finish out the day,'' I doubt that he was so specific, for reasons to be discussed later.

McClearen attended the union meeting that night; DeLoach did not. At the meeting, McClearen raised the subject of his grievance relating to Overton, and a committee was appointed to hear the matter. On the afternoon of Sunday, July 8, DeLoach telephoned McClearen and told him that he was reactivating the termination notice.

According to DeLoach, he simply told McClearen that he was going to ''let the termination go,'' and that when McClearen asked him to ''think about this a little bit more,'' DeLoach replied that ''that's what I've been doing, I've been thinking about it,'' and ended the conversation. McClearen gave a much more incriminating version of the conversation. He said that DeLoach told him, in effect, that he was being fired because he ''went down to the Union hall and raised so much god damm hell'' and now ''we've got all this [arbitration] to go through.''

I do not credit McClearen's version of the conversation. As a witness, McClearen inspired no particular feeling of confidence, and I am inclined to believe that DeLoach would not have been so indiscreet as to have blurted out the precise unlawful reason for having changed his mind.

On hostile-witness examination, DeLoach testified that ''all'' the reasons that led him to discharge McClearen were that the latter had had ''talked too much and agitated other employees,'' had ''cussed'' at him, and ''had slowed down some of the work of other workers due to his talking.'' DeLoach, while appearing as a witness for the Respondent, also said that he did not ''think'' that he knew anything ''that happened at the union meeting before I made this phone call''; why he would have been uncertain about the matter is difficult to comprehend. He also gave some very strange testimony regarding a telephone conversation he had, prior to his Sunday discharge of McClearen, with a now retired former supervisor of his, one Harlow Schemmel, presently living in Kansas City.

At first DeLoach said that he told Schemmel ''what the situation was down here and after talking to him I just made the decision that I didn't really need Willie coming back out there because I couldn't see after these things had happened and the job was finishing anyway. He wouldn't have been there but a couple more days.'' When asked further about his conversation with Schemmel, DeLoach gave the following, at times almost incoherent, testimony:

> A.Well, this is something pretty new to me.
>
> Q. What is that?
>
> A. Having these problems like this on the job, and I didn't know whether—I didn't know what I should, you know, I didn't know what to do really to tell you the truth. I was nervous about it. I was upset about it. So I just called him up and told him [Schemmel] what had happened and what I had done and what he thought about what I had done.
>
> Q. This was—what had you done? I mean, this was before you reinstated that the layoff or the discharge of Mr. McClearen, right?
>
> A. Yes, sir.
>
> Q. You sought Mr. Schemmel's advice as to what to do?
>
> A. Well, not really his advice I don't guess. I was just curious I guess, you know, if I was doing the right thing. Maybe—I don't know, you know, I just felt like I needed to talk to somebody and I just called him. You know, maybe I shouldn't have even brought that up awhile ago. It wasn't anything pertaining to July 6th or anything.
>
> Q. It wasn't
>
> A. No.
>
> Q. What was it about?

[5] I also base this and other findings herein in part on the testimony of Roy Brannon, a credible-appearing witness.

[6] As McClearen himself pointed out, his work would not have brought him into contact with the Quaker Oats employees, so it is unlikely to me that DeLoach would have made such an allusion.

A. I mean talking—I'm talking about talking to Harlow didn't have anything to do with me writing the layoff slip to start with.

Q. You were concerned about your relationship with Mr. McClearen.

A. Right.

Q. And that's why you called Mr. Schemmel?

A. I guess you could say that.

Q. So talking to Harlow did have a lot to do with his eventual discharge.

A. Well, I knew that—I knew that Willie had—was pretty notorious about suing everybody.

MS. SPEER: Objection, Your Honor. I move to strike.

MR. PATZKE: He answered the question.

THE WITNESS: And that's—

JUDGE RIES: No—well, I sustained the objection. And I'll grant the motion to strike.

This is a most peculiar colloquy. Without hesitation or consulting Schemmel, DeLoach discharged McClearen on Friday, but then agreed to retract the discharge. On Sunday, however, although he assertedly anticipated that McClearen would only be working a ''couple more days,'' DeLoach ''didn't know what to do really,'' ''was nervous about it,'' ''was upset about it,'' sufficiently so to make him call Schemmel in Kansas City because he ''needed to talk to somebody'' to see ''if he was doing the right thing.'' He even was concerned that McClearen might sue him.[7] But what was DeLoach so worked up about? He had, seemingly, put the matter to rest on Friday, when he rescinded the discharge. Why was he, on Sunday, having received an apology from McClearen, with only a perceived ''couple of days'' of McClearen employment left, suddenly in a veritable stew, ''nervous'' and ''upset'' enough to call his former supervisor in Kansas City, and once again contemplating the discharge of McClearen? The only intervening circumstance was McClearen's initiation of his grievance at the Friday night union meeting. In the situation outlined, it is very difficult to avoid the inference that DeLoach, who did not ''think'' he had heard of the union meeting by Sunday, had indeed not only heard of it but was in fact motivated by it in determining to discharge McClearen.[8]

I also find support for this conclusion in the change made by DeLoach in the termination notice, from the way it was written when it was handed to McClearen on July 6 to when McClearen received it again thereafter. According to McClearen, on July 6 DeLoach had written in, as the ''Detailed Explanation,'' ''unsatisfactory work as a result in talking to [*sic*] much.'' When he later received the same document, DeLoach had added, ''agitating other workers'' and, under ''Remarks,'' the words ''not for rehire.'' DeLoach was not asked about the former alleged change, and as to the latter, he ''could have added that or I could not have. I don't really remember that.''

In view of McClearen's seeming certainty, and DeLoach's lack thereof, on this point, I would credit McClearen. I would also deduce that it must have been something new that happened between Friday afternoon and Sunday which led DeLoach to express this extra measure of vengeance.

I have considered the fact that, as McClearen testified, DeLoach told him that if he wanted to talk to Tims, ''[Y]ou talk to him at the union meeting.'' The implication could be that DeLoach had no objection to McClearen urging his grievance, as long as it was done at the appropriate time. But there is a difference between an employer uttering a generalized statement such as the foregoing in the course of an argument and his receiving information that an employee whom he has fired and then rehired has had the gall to file a grievance in the teeth of his largesse. *Something* moved DeLoach from condonation and rehiring[9] on Friday to reinstatement of the discharge on Sunday.

In the circumstances given, I draw the inference that DeLoach had heard about McClearen pressing the grievance at the Friday night union meeting[10] and, angered (especially in view of his having indulgently forgiven McClearen on Friday), he determined on Sunday to let him go. He would not have done so, I feel sure, if McClearen was only to work a few more days. There is, finally, no longer any doubt that a discharge of an employee for honestly pressing a contractual grievance is violative of the Act. *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984).

There is no direct evidence of this finding of motivation, but, in these cases, there seldom is. I find that the proofs adduced are in line with the requirements of *Wright Line*, 251 NLRB 1083, 1089 (1980), as approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). I further find that the ''preponderance of the testimony taken,'' the General Counsel's ultimate burden of proof as set out in Section 10(c) of the Act, is met under the definition of that phrase given by the Court of Appeals for the Sixth Circuit in *Jim Causley Pontiac v. NLRB*, 675 F.2d 125, 127 (6th Cir. 1982): ''more likely so than not so.''

B. *The Alleged Coercive Statements*

As noted, the complaint alleges that on July 6 and 8, Respondent, through DeLoach, violated Section 8(a)(1) by saying that Respondent ''did not want [McClearen] to discuss grievances with the Union and that [McClearen] was being fired because [McClearen] filed a grievance with the Union.''

As to the July 6 incident, it is obvious that DeLoach did not intend to make any such blanket statement about McClearen discussing grievances with the Union; indeed,

[7] I erred in striking DeLoach's testimony about McClearen's notoriety for suing people. The concern relates to DeLoach's state of mind and, while not probative of the truth of the matter, is appropriately received.

[8] Billy Tims, testifying for Respondent, told us that while at work on Sunday, July 8, DeLoach came up to him and said that ''he had talked to his bosses and his bosses said that he had—that he was to terminate unsatisfactory work [*sic*]. '' He said that DeLoach referred to the work performed by McClearen and ''he's stopping y'all from working.'' It seems odd that DeLoach would have mentioned his ''bosses'' in this connection; his own testimony is that he himself made the decision. I do not know whether to believe Tims or not; generally, I had doubts about his objectivity. But even if such a conversation occurred, it does not necessarily prove anything more than an attempt by DeLoach to be prudent.

[9] DeLoach testified that he only told McClearen on Friday to ''finish the shift,'' and Respondent argues that McClearen was never really rehired. But since DeLoach also testified that McClearen, as of Sunday, had only a ''couple of days'' of work left, he himself was saying that he expected McClearen to continue to work after Friday.

[10] See *Dumbauld Corp.*, 298 NLRB 842 fn. 1 (Meredith).

McClearen testified that DeLoach said that he should pursue his grievance at the union meeting rather than on the job. It was only in the context of telling McClearen not to talk on the job and thereby distract other employees that DeLoach may have mentioned grievances; while there is a contention made by the General Counsel on brief that there was disparate treatment here, I do not find sufficient evidence of any in the record. There is no reason to believe that DeLoach did not credit Tims's complaints about McClearen; they appear to be the reason for the first discharge. I conclude that no violation occurred on July 6.

As for July 8, I have already discredited McClearen's testimony that DeLoach, in firing McClearen, reproached him for raising ''so much God damn hell'' in the union hall by filing the grievance. I may be wrong, of course; McClearen could have been telling the truth. But given my impression of McClearen, DeLoach, the circumstances, and the thousand particulates of fact, feeling, and logic which enter into these determinations, I entertain a doubt sufficient to require discrediting McClearen. I therefore would also dismiss the July 8 violation of Section 8(a)(1) alleged in the complaint.

C. *The Failure to Abide by the Award*

The complaint alleges that, in violation of Section 8(a)(1), Respondent has refused to abide by an arbitration award in favor of McClearen.

The record shows that at the union meeting of July 6, the president purported to appoint two attending members to make up part of a committee to entertain McClearen's grievance. The Respondent argues that the appointments must have been to the ''appeals committee'' referred to in article VII, section B,7 of the collective-bargaining agreement. I do not think that provision is applicable, since it only deals with complaints filed by ''any applicant for employment,'' which McClearen was not (indeed, his claim was that he *had* been employed and was unlawfully laid off for 1 day). I cannot say with any certainty, however, that the union members did not think they were proceeding under this section, since as the record discloses, few, if any, grievances of any sort had been formalized in the past, and to all appearances the membership was not very familiar with the grievance provisions of the agreement.[11] Article VII requires that the committee be composed of ''one member appointed by the union, one member appointed by the Employer, and one public member appointed by both of these members.''

Among a more informed group, there would have been little doubt that the proper provision under which McClearen's grievance should have been filed was article XV of the agreement, entitled ''Arbitration Committee,'' which generally provides for disputes under the agreement to be ''referred to a committee for arbitration.'' Again, however, although the term ''public member'' is not used in article XV, as it is in article VII, the same basic procedure is: ''One member of the committee shall be selected by the Employer, one by the Union, and the two shall select the third committee member.''

The way selection was done in this case, however, was that at the July 6 meeting, the president asked two members, Phifer and Hurst, if they would serve on the committee. At the time of the ''arbitration,'' which appears to have been 2 weeks or so after the union meeting, a third union member, Ray Eaves, showed up and advocated Respondent's case. The genesis of Eaves' appearance will be explained hereafter.

Respondent argues that the committee was jurisdictionally defective, since no ''public'' or ''neutral'' member was selected by the other two parties. Smalltown labor relations are not to be expected to measure up to the standards of a society of parliamentarians, however, and the evidence here convinces me that there was sufficient compliance with article XV. Kelly Wade, a witness for the Respondent, testified that at the July 6 meeting, after a motion was made and seconded that McClearen's grievance be prosecuted, McClearen said that he wanted member Ed Phifer to ''represent him,'' and the membership then made a ''motion,'' or ''appointed,'' Vince Hurst to be the ''neutral party,'' and it was contemplated that DeLoach ''would select somebody to represent him.'' Hurst was a member of the Union, but he was self-employed.

Roy Brannon, DeLoach's foreman who testified credibly for the General Counsel, said that on July 9, he heard steward Tims tell DeLoach that ''they had set up three people board [sic] to view Willie McClearen's complaint.'' Tims told DeLoach that Hurst and Phifer were going to be on the committee, and apparently, although it is not definitively clear, DeLoach said that ''he didn't mind it.'' It thus appears that DeLoach agreed to the composition of the committee. Brannon further testified that DeLoach told him that DeLoach ''needed someone to—out there on the job to go and be on that committee,'' and DeLoach asked Brannon if he would serve.

The testimony on the appointment of Respondent's representative was convoluted. As we have seen, Tims told DeLoach about the ''board'' which had been set up and the need for an Employer representative ''to be on that committee.'' DeLoach did testify that he had ''hearsay'' of such a meeting from people in the field.[12] After Brannon agreed to ''be on that committee,'' he subsequently realized that he had a previous engagement and so told DeLoach. In Brannon's presence, DeLoach asked Ray Eaves if he ''would do it'' (Eaves evidently had been present when DeLoach had originally asked Brannon to take the assignment), and Eaves agreed.

Eaves testified that he was only present at the ''arbitration'' (Eaves' usage of the word indicates his understanding of the meeting) as a witness on Respondent's behalf, to tell DeLoach's side of the story. Phifer somewhat ambiguously testified that Eaves ''was talking on the company's behalf without a doubt, but I can't recollect him saying that this or that was Kuhlman's view of it or their wants.'' Without contradiction, McClearen testified that ''Mr. Eaves and Mr. Phifer and Mr. Hurst came out and told me that they had found in my favor.'' Business Agent Lewis called DeLoach to say that ''the committee told me to tell him'' that Re-

[11] At the hearing, McClearen at first identified art. VII, sec. B,7 as the provision under which the membership was proceeding, but thereafter changed his mind.

[12] When asked by Respondent's counsel about whether he had received any correspondence relating to choosing a neutral party, DeLoach replied, ''No sir. All I know was hearsay out there on the job.''

spondent owed McClearen for a day's work. DeLoach made no response and never paid McClearen.

I believe that, in a rather haphazard way, Eaves did wind up at the hearing in the role of ''representative'' of Respondent. I do not believe, as DeLoach testified, that he thought that this specially appointed ''board'' was just convened to engage in some sort of preliminary assessment of the facts of a 1-day pay claim. It is unfortunate, but not fatal, that the arbitration committee was established in such an informal manner. I conclude on the whole record that the committee was the sort of proceeding contemplated by the bargaining agreement; that DeLoach was told about, comprehended, and approved its composition, purposes, and authority; that he sent Eaves to the committee meeting as his arbitration representative; and that Eaves (as McClearen uncontrovertedly testified) acted together with Hurst and Phifer to make the arbitration award.[13]

Neither the complaint nor the General Counsel's brief contends that Respondent's refusal to pay the award violated Section 8(a)(5) of the Act; both documents solely claim a violation of Section 8(a)(3). I cannot conclude that the refusal to abide by the award was motivated by antiunion animus; from the beginning, prior to McClearen's grievance, DeLoach took the position that McClearen was not entitled to the day's pay claimed, and I see no evidence that the refusal to comply with the award indicates, as the General Counsel argues, that Respondent thereby ''persists in its discriminatory conduct toward McClearen.''

D. *The Backpay Due to McClearen*

Pursuant to 29 CFR 102.54(b), the General Counsel has included in his complaint a backpay specification amounting to $926.20, which includes $122.80 relating to the arbitration award discussed supra. While Respondent's answer generally denies the discrete backpay allegations, its brief does not address the backpay issue.

Accordingly, I shall assume that the formulae and figures used in the backpay specification are acceptable to Respondent as an accurate summary of the backpay to which McClearen would be entitled if the case result favors him. Therefore, the only adjustment I shall make is the elimination of the $122.80 which the specification includes for the arbitration award. With this adjustment, the net backpay due is $803.40.

CONCLUSIONS OF LAW

1. Respondent Kuhlman, Incorporated is an employer within the meaning of Section 2(2) of the Act and engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 407, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Willie F. McClearen Jr. on July 8, 1990, Respondent violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

5. In no other respect alleged in the complaint has Respondent violated the Act.

REMEDY

Having found that Respondent has engaged in an unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It is appropriate that Respondent be required to pay Willie F. McClearen Jr. the sum of $803.40 as backpay, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less taxes which should be withheld.

Provisions will also be made for the posting of an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Kuhlman, Incorporated, Jackson, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminating against employees for engaging in concerted activities protected by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in their right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Willie F. McClearen Jr. whole by paying him $803.40, with interest and less taxes, to compensate for the loss he suffered by reason of the discrimination against him as set forth in the remedy section of this decision.

(b) Expunge from the personnel file of McClearen and other files any reference to his discharge on July 8, 1990, and notify him in writing that such discharge will not be considered in any future personnel actions involving him.

(c) Post at its place of business in Jackson, Tennessee, copies of the attached notice marked ''Appendix.''[15] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date this Order what steps the Respondent has taken to comply.

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[13] As counsel for the General Counsel notes, DeLoach's first choice as his representative was Foreman Brannon, who apparently played no direct role in the dispute which gave rise to the grievance.

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminate against employees because they engage in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join, or assist unions, to bargain collectively through representatives of their own choosing, to engage in other mutual aid or protection, or to refrain from such activities.

WE WILL make Willie F. McClearen Jr. whole for the loss he suffered as a result of our discrimination against him.

WE WILL expunge from our files any reference to the discharge of McClearen and WE WILL not consider such discharge in any future personnel actions affecting him.

KULHMAN, INCORPORATED